



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/647,076	08/22/2003	Yuichi Mori	51015/DBP/A400	9698
23363	7590	10/27/2005	EXAMINER	
CHRISTIE, PARKER & HALE, LLP PO BOX 7068 PASADENA, CA 91109-7068			GELLNER, JEFFREY L	
			ART UNIT	PAPER NUMBER
			3643	
DATE MAILED: 10/27/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/647,076

Applicant(s)

MORI ET AL.

Examiner

Jeffrey L. Gellner

Art Unit

3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 17 August 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) 1-14 is/are allowed.
- 6) ☒ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Information Disclosure Statement***

Acknowledgement is made of Applicants' IDSs received 26 November 2004 and 18 October 2005. Although the Examiner has included signed 1449s with the instant office action, all art prior cited in IDSs and 892s from office actions prior to the filing of the RCE are still extant in the application. MPEP 706.07(h) states that "An RCE is not the filing of a new application. Thus, the Office will not convert an RCE to a new application such as an application filed under 37 CFR 1.53(b) or a continued prosecution application (CPA) under 37 CFR 1.53(d)."

Also, for the IDS received 18 October 2005 under the "OTHER DOCUMENTS" heading Examiner considers the "Israel Office Action, dated August 18, 2005" to be a letter discussing the office action and not the office action, itself.

### ***Declaration under Rule 132***

The declaration of Akihiro Okamota under 37 CFR 1.132 filed on 17 August 2005 is insufficient to overcome the rejection of claims 1-4, 7, and 12-14 based upon 35 USC 102(b) using Weder et al. as set forth in the last Office action because a declaration under 37 CFR 132 cannot be used to overcome a rejection based upon 35 USC 102(b) but only obvious rejections (see MPEP 716.01(a)).

The declaration of Akihiro Okamota under 37 CFR 1.132 filed on 17 August 2005 is insufficient to overcome the rejection of claims 5 and 6 and 8 to 11 based upon 35 USC 103(a)

Art Unit: 3643

using Weder et al. and Sakai in view of Weder et al., respectively, as set forth in the last Office action because the declaration refers only to the system described in the above referenced application and not to the individual claims of the application. Thus, there is no showing that the objective evidence of nonobviousness is commensurate in scope with the claims. See MPEP § 716.

Finally, The declaration of Akihiro Okamoto under 37 CFR 1.132 filed on 17 August 2005 appears to show that when cellophane is used as the film then plants will not grow (see, for example, middle of page 5). Okamoto's observations concerning the use of cellophane raises the issue of a statutory rejection under 35 USC 101 for being inoperative for at least cellophane (see, *inter alia*, MPEP 2107.01 II - Wholly inoperative inventions; "Incredible" utility").

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4, 7, and 12-14 are rejected under 35 U.S.C. §102(b) as being anticipated by Weder et al. (US 5,363,592).

As to Claims 1, 12-14, Weder et al. discloses a plant-cultivating container (28 of Fig. 3) having a receiving portion (36 of Fig. 3) for receiving a plant body; the container having at least a portion of it being a vapor-permeable portion comprising a non-porous hydrophilic film ("cellophane" of col. 2 line 52) to which substantially no hydrophobic porous film is

Art Unit: 3643

superimposed (in Fig. 4 is decorative layer 44 is burlap (see col. 4 lines 3-8)), wherein the selective moisture vapor-permeable portion prevents direct contact between the receiving portion and external water, the selective moisture vapor-permeable portion not allowing water to pass therethrough, but allowing water vapor to pass therethrough.

As to Claim 2, Weder et al. further disclose the moisture vapor-permeable portion permeability of  $1 \times 10^3$  g/m<sup>2</sup> per 24 hr (from Applicant's specification where cellophane is listed in page 13 line 16 as an acceptable moisture vapor-permeable material).

As to Claims 3 and 4, Weder et al. further disclose the ratio of vapor-permeable portion to total surface area is 20% or more of the total surface area (Figs. 1 and 3).

As to Claim 7, Weder et al. further disclose a perforated plate (Fig. 3 in that 38 is a perforation).

### ***Claim Rejections - 35 USC §103***

The following is a quotation of 35 U.S.C. §103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 5 and 6 rejected under 35 U.S.C. §103(a) as being unpatentable over Weder et al. (US 5,363,592).

As to Claims 5 and 6, the limitations of Claim 1 are disclosed as described above. Weder et al. further discloses the selective moisture vapor-permeable portion a composite material (col. 2 lines 56-63). It would have been obvious to one of ordinary skill in the art at the time of the

invention to modify the container of Weder et al. by adding water permeable material, for example burlap, to the container to add support or thickness and to place on the outside to meet consumer demand.

Claims 8-11 are rejected under 35 U.S.C. §103(a) as being unpatentable over Sakai (JP 7-45169) in view of Weder et al. (US 5,363,592).

As to Claim 8, Sakai discloses a plant container (1 of Fig. 1) having a receiving portion for a plant body (9 of Fig. 1); the container having a portion that is a selective vapor-permeable portion (2 of Fig. 1) which has no hydrophobic film superimposed (6 of Figs. is not a hydrophobic film - see translation at page 10); a plant body in the container (Fig. 1); and cultivating the plant with the selective moisture vapor-permeable portion in contact with water and preventing direct contact between the plant body and external water (see Fig. 1). Not disclosed is the selective moisture vapor-permeable portion a film. Weder et al., however, discloses the selective moisture vapor-permeable portion being a film ("cellophane" of col. 2 lines 48-52). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the container of Sakai by using the film of Weder et al. so as to find more use for the film so as to increase sale. The container of Sakai as modified by Weder et al. inherently perform the method steps recited in Claim 8.

As to Claim 9, Sakai as modified by Weder et al. further disclose the water being temperature controlled water (in that all water has an temperature that is controlled by the ambient environment).

Art Unit: 3643

As to Claims 10 and 11, Sakai as modified by Weder et al. further disclose salt water (10 of Fig. 1).

***Response to Arguments***

Applicant's arguments filed 17 August 2005 have been fully considered but they are not persuasive. Applicants' arguments are: (1) Weder does not disclose that no hydrophobic film is superimposed on the non-porous hydrophilic film (Remarks page 5, middle para.); (2) Weder's invention does not allow for a space between container and liner in which external water would be placed (Remarks page 5, 2<sup>nd</sup> para.); and, (3) Weder discloses a hole at the bottom of the container and liner (Remarks page 5, last para.).

As to argument (1), Weder does not disclose a hydrophobic porous film superimposed on the non-porous hydrophilic film. Weder discloses that such materials as "paper" or "burlap" can be superimposed on the cellophane film (col. 4, lines 3-8). Paper and burlap are not considered to be films or to be hydrophobic.

As to argument (2), Applicant does not claim a space between the films. Also, Examiner considers a space between Weder's liner (28) and decorative cover (44). Since the two layers are not laminated, there must be "space" between the two layers, even if the space's width is only several air molecules in size.

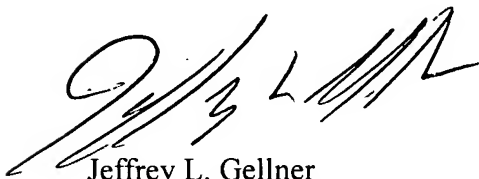
As to argument (3), the liner of Weder need not have a hole (col. 2, lines 40-44).

Art Unit: 3643

*Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey L. Gellner whose telephone number is 571.272.6887. The examiner can normally be reached on Monday-Friday, 8:30-4:00, alternate Fridays off, if attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on 571.272.6891. The fax phone number for the organization where this application or proceeding is assigned is 571.273.8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'J. L. Gellner', with a stylized flourish at the end.

Jeffrey L. Gellner  
Primary Examiner  
Art Unit 3643